

AMENDED IN ASSEMBLY SEPTEMBER 4, 2003

AMENDED IN ASSEMBLY JULY 16, 2003

AMENDED IN ASSEMBLY JUNE 30, 2003

AMENDED IN SENATE APRIL 28, 2003

AMENDED IN SENATE APRIL 8, 2003

SENATE BILL**No. 686**

Introduced by Senator Ortiz

February 21, 2003

An act to amend Section 674.6 of, to add Section ~~674.8~~ 674.9 to, and to add Chapter 5 (commencing with Section 11890) to Part 3 of Division 2 of, the Insurance Code, relating to long-term care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 686, as amended, Ortiz. Long-term care facilities: insurance.

Existing law provides for the licensure and regulation of health facilities, including long-term health care facilities, by the State Department of Health Services.

Existing law provides for the licensing and regulation of residential care facilities for the elderly by the State Department of Social Services.

Existing law requires an insurer to notify the Department of Insurance at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of commercial liability insurance.

This bill would require an insurer issuing policies of liability insurance to long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or

residential care facilities for the elderly, to notify the Department of Insurance at least 90 days prior to the date it intends to cease, withdraw, or substantially withdraw from offering liability policies to those facilities.

The bill would require each insurer ~~authorized to write~~ *writing* liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly, by a date set by the Insurance Commissioner, but in any event no later than July 1 of each calendar year, to report to the Insurance Commissioner specified information regarding policies for those facilities. This bill would establish priorities for the department and the Insurance Commissioner concerning the collection of information reported by the insurers.

This bill would also make the above information collected by the department subject to specified disclosure protections.

Existing law generally regulates the insurance industry.

This bill would allow the Insurance Commissioner to authorize the formation of a market assistance program *or a risk pooling arrangement*, as specified, to assist in securing liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly if the Insurance Commissioner finds, after a public hearing, that the liability insurance is not readily available in the voluntary insurance market and that the public interest requires its availability.

The bill would also allow the Insurance Commissioner to order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, for the purpose of providing, for a specified period, a market for liability insurance on a self-supporting basis, without subsidy from association members.

This bill would authorize the commissioner to develop appropriate standards and regulations to implement the market assistance program, risk pooling arrangement, or joint underwriting association.

This bill would provide that it shall only be implemented if funds for its purposes are available in the Insurance Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 674.6 of the Insurance Code is amended to read:

674.6. (a) No insurer issuing policies of insurance subject to Section 674.5 or 675 shall cease to offer any particular line of coverage without prior notification to the commissioner.

(b) Except as provided in Section ~~674.8~~ 674.9, an insurer shall notify the department at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of (1) commercial liability insurance, (2) any insurance defined in Section 660 or 675 when coverage is provided by a separate rider or endorsement for an activity for which the insured receives compensation, a stipend, or remuneration of any kind for the activity and then only to the extent of the coverage, (3) any other insurance defined in Section 660, or (4) any insurance issued to an individual or individuals covering a risk not arising from a business or commercial activity. Upon receipt of the notice, the commissioner may request and review additional information, as deemed necessary, and investigate the market conditions to determine whether that insurance may become not readily available in the voluntary insurance market as a result of the withdrawal.

(c) For purposes of this section, “intent to substantially withdraw” means an insurer’s intent to nonrenew in excess of 50 percent of its current policyholders in the line of coverage upon their next renewal.

(d) The commissioner shall adopt appropriate rules, regulations, and standards for purposes of implementing this section.

(e) Any insurer that has notified the commissioner pursuant to subdivision (b) shall (1) notify the commissioner within 10 days after the date given in the withdrawal notice if the insurer does not in fact withdraw that line of insurance from the market, or (2) notify the commissioner within 10 days after reentry if the insurer reenters that line after the withdrawal.

SEC. 2. Section ~~674.8~~ 674.9 is added to the Insurance Code, to read:

~~674.8.~~—

674.9. (a) Notwithstanding subdivision (b) of Section 674.6, an insurer issuing policies of liability insurance to long-term

1 health care facilities, residential care facilities for the elderly, or
2 physicians who provide or oversee the provision of services to
3 residents in long-term health care facilities or residential care
4 facilities for the elderly shall notify the department at least 90 days
5 prior to the date it intends to cease, withdraw, or substantially
6 withdraw from offering liability policies to those facilities or
7 physicians.

8 (b) Each insurer ~~authorized to write~~ *writing* liability insurance
9 for long-term health care facilities, residential care facilities for
10 the elderly, or physicians who provide or oversee the provision of
11 services to residents in long-term health care facilities or
12 residential care facilities for the elderly shall, by a date to be set by
13 the commissioner, but in any event no later than July 1 of each
14 calendar year, report to the commissioner information specified by
15 him or her regarding liability policies for those facilities or
16 physicians. The information shall include, but not be limited to, the
17 following:

18 (1) Whether the insurer is writing coverage for long-term
19 health care facilities, residential care facilities for the elderly, or
20 physicians who provide or oversee the provision of services to
21 residents in long-term health care facilities or residential care
22 facilities for the elderly, including new and renewal policies, and
23 the types of policies it is writing.

24 (2) The number *and types* of long-term health care facilities or
25 residential care facilities for the elderly and beds covered.

26 (3) The total amount of premiums from insureds, both ~~received~~
27 *written* and earned, during the immediately preceding ~~calendar~~
28 *year five calendar years*.

29 (4) The total number of claims received, including the amount
30 per claim.

31 (5) The number of claims ~~outstanding~~ *incurred*, together with
32 the monetary amount reserved for loss and ~~allocated loss~~ *defense*
33 *and cost containment* expense for the immediately preceding
34 ~~calendar~~ *accident year or report year*.

35 (6) The number of claims closed with payment during the
36 immediately preceding ~~calendar year~~ *five calendar years*, the total
37 monetary amount paid *for loss* thereon, reported by the year the
38 claim ~~occurred~~ *was incurred*, and the total ~~allocated loss~~ *defense*
39 *and cost containment* expense paid thereon, reported by the year
40 the claim ~~occurred~~ *was incurred*.

1 (7) The monetary amount paid on claims, including the amount
2 paid per claim, during the immediately preceding ~~calendar year~~
3 *five calendar years* to be reported separately by the year the claim
4 ~~occurred, with allocated loss was incurred, with defense and cost~~
5 *containment expense* paid.

6 (8) The number of claims closed without payment during the
7 immediately preceding ~~calendar year, five calendar years,~~
8 *reported* by the year the claim ~~occurred, and the allocated loss was~~
9 *incurred, and the defense and cost containment expense* paid
10 thereon.

11 (9) The monetary amount reserved in the annual statement for
12 *loss and defense cost containment expense* for the immediately
13 preceding calendar year for *outstanding* claims incurred but not
14 reported to the insurer.

15 (10) The number *and types* of lawsuits filed against the
16 insureds in the immediately preceding calendar year.

17 (11) Annualized information on investment income or loss,
18 which shall be consistent with the reported information provided
19 by insurers to the National Association of Insurance
20 Commissioners.

21 (c) For the purposes of information collection conducted
22 pursuant to this section, first priority shall be given by the
23 department and commissioner to collecting and compiling
24 information from insurers concerning long-term health care
25 facilities and physicians providing services in those facilities, and,
26 to the extent that departmental resources allow, secondary priority
27 shall then be given to the collecting and compiling of information
28 concerning residential care facilities for the elderly and the
29 physicians who provide services in those facilities.

30 (d) Information that is collected for long-term health care
31 facilities and the physicians for those facilities shall be collected,
32 maintained, analyzed, and reported separately from information
33 that is collected, maintained, analyzed, and reported concerning
34 residential care facilities for the elderly, and the physicians for
35 those facilities.

36 (e) As used in this section, “long-term health care facility” has
37 the same meaning as that term is defined in Section 1418 of the
38 Health and Safety Code.

(f) As used in this section, “residential care facilities for the elderly” has the same meaning as that term is defined in Section 1569.2 of the Health and Safety Code.

(g) Information collected by the department pursuant to this section shall be deemed official information and subject to the disclosure protections of Section 1040 of the Evidence Code. Nothing in this section shall require individualized information that would identify the amount paid by a specific insurer or facility to be released. However, nothing in this subdivision shall prevent the department from preparing reports and policy recommendations based on the data collected pursuant to this section.

SEC. 3. Chapter 5 (commencing with Section 11890) is added to Part 3 of Division 2 of the Insurance Code, to read:

CHAPTER 5. MARKET ASSISTANCE PROGRAM FOR LONG-TERM
HEALTH CARE FACILITY LIABILITY INSURANCE

11890. As used in this chapter:

(a) “Long-term health care facility” has the same meaning as that term is defined in Section 1418 of the Health and Safety Code.

(b) “Residential care facilities for the elderly” has the same meaning as that term is defined in Section 1569.2 of the Health and Safety Code.

11891. (a) If the commissioner finds after a public hearing that liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly is not readily available in the voluntary insurance market, and that the public interest requires this availability, the commissioner may authorize the formation of a market assistance program to assist in securing that insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of services to residents in long-term health care facilities or residential care facilities for the elderly. The commissioner may require insurers, agents, and brokers to attend public hearings and meetings concerning either the need for a market assistance program or the organization and formation of a program. The commissioner may also assist in securing insurance

1 for long-term health care facilities, residential care facilities for
2 the elderly, or physicians who provide or oversee the provision of
3 services to residents in long-term health care facilities or
4 residential care facilities for the elderly for which commercial
5 liability insurance is not readily available by forming a risk
6 pooling arrangement as permitted by the Federal Liability Risk
7 Retention Act of 1986.

8 *(b) The commissioner may develop appropriate standards and*
9 *regulations to implement the market assistance program and risk*
10 *pooling arrangement authorized by this section.*

11 11892. (a) The commissioner may order the creation of an
12 unincorporated, not-for-profit, temporary joint underwriting
13 association for liability insurance, constituting a legal entity
14 separate and distinct from all its members. The purpose of the
15 association shall be to provide a market for liability insurance on
16 a self-supporting basis, without subsidy from association
17 members.

18 (b) If the commissioner determines after a public hearing that
19 liability insurance for long-term health care facilities, residential
20 care facilities for the elderly, or physicians who provide or oversee
21 the provision of services to residents in long-term health care
22 facilities or residential care facilities for the elderly is readily
23 available through the voluntary market, the association created
24 pursuant to subdivision (a) shall cease its underwriting operations.

25 *(c) The commissioner may develop appropriate standards and*
26 *regulations to implement the joint underwriting association*
27 *authorized by this section.*

28 SEC. 4. *This act shall only be implemented if funds for its*
29 *purposes are available from the Insurance Fund.*

